

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

FILED
COURT OF APPEALS
DIVISION II

2012 AUG -6 AM 9:15

In re PERSONAL RESTRAINT PETITION of

TOMMY L. CROW JR.

Petitioner, Pro se,

Case No. 42926-8-11
BY M DEPUTY

STATE OF WASHINGTON
Reply to State's
Response to PRP

I. Statement of the Case

The Statement of this case is set out on Pages 1-10 of Petitioner's Opening brief.

II. Argument and Reply to State's Response

Issues One and Two

Prosecutor misconduct denied Petitioner due process and a fair trial

for supporting facts and supporting caselaw for these claims see PRP at 10-18.

The Prosecutor told the Jury they must [glean the truth] from the two co-defendant's. Then he put together his own testimony as an unsworn witness depriving Petitioner a fair trial. PRP at 10-12

Here the Prosecutor told the jury that most of the two co-defendant's testimony was self serving lies, but the truth could be [gleamed] from their testimony. This allowed the Prosecutor's participation in the trial to act as a unsworn silent witness. Then during closing arguments he put it all together in his testimony under the guise of closing arguments.

The Prosecutor's prejudicial testimony was not exposed to cross examination. Therefore defense counsel did not have a fair opportunity to cast doubt on the circumstances under which the prosecutor crafted together his testimony [gleamed] from his version of the truth.

Respondent argues that this Court should not consider petitioner's claims of prosecutor misconduct, because he did not raise them on direct appeal and he did not explain why he failed to do so. State's Resp. at 8.

However petitioner argues in issue three of his PRP that appellate counsel was ineffective for failing to raise prosecutor misconduct and trial counsel's failure to object to the prosecutor misconduct, PRP at 15-18.

Not once does the state mention the letters that Bryan Eke wrote to petitioner. See Ex. I of Appellate Brief.

Petitioner was prejudiced because the state admits there is no record of trial counsel asking for the notes, and the state's argument that the handwriting was inconclusive and could not be used to impeach is without merit, because McKague and Eke admitted to the letters and their contents, State's Resp. at 13 and PRP at 13-15

Petitioner was further prejudiced because Durga is not claiming the state had him give false statements before trial. Durga claims he notified the state before trial that he lied in his statements and Durga also claims Petitioner was not involved in the murders, see declaration of Sgt. Costello in Appendix F of State's Resp.

Costello claims he met with Durga on 3/6/2009 and no record of the interview exists, yet Petitioner's trial started 3 days later on 3/9/2009 and the state still forced Durga to give false testimony that Petitioner was involved in the murders. McKague states on the record that he notified the state the week before trial and the state still put him on the stand with the intent to ~~provide~~ provide perjured testimony RP 1234-35.

The record also shows that Durga was coached by the state to testify that Petitioner was involved. States Resp. at 17.

A Jury's job is not to solve a case. Rather, the Jury's duty is to determine whether the state has proved it's allegations against a defendant beyond a reasonable doubt. State v. Anderson, 153 Wn. App 417, 431 (2009).

The prosecutor's misconduct was so flagrant and ill-intentioned that petitioner was denied a fair trial and due process of the law guaranteed in the 6th and 14th U.S. Const.

Issue Three

Appellate Counsel was Ineffective

for supporting facts and supporting case law for this claim see PRP at 15-18

Respondent argues that the evidence does not support petitioner's claims of ineffective Appellate Counsel. State's Resp. at 19-33.

Petitioner was prejudiced because trial counsel never went over any evidence with him, and petitioner filed a complaint against counsel for failing to do his job. Trial counsel also destroyed petitioner's case file, before petitioner's appeal was finalized in March 2011. See declaration of Ron Sergi in Appendix Q

The prejudice continued, because counsel's investigator told him that Aaron Adams testimony would damage Eke's credibility, then counsel told the jury what effect the testimony would have on them

Issue four

Petitioner's Right to a Unanimous Verdict was violated

for Supporting facts and Supporting Case law for this Claim See PRPat 18-19

The State Argues that Petitioner is not entitled to a unanimous verdict on alternative means of murder. State's Resp at 33

Petitioner was Prejudiced because even the Trial Judge Said on the record that there is a possibility that half the Jury found Petitioner innocent of the intentional murders, but guilty of felony Murder, and the other half of the Jury could have found him innocent of the felony murder and guilty of intentional murder PRPat 18-19

Petitioner was entitled to a Unanimous verdict on alternative means, because felony murder and intentional murder are two different crimes with different elements and means, therefore the state did not prove every element of the crimes ~~in violation~~ beyond a reasonable doubt, in violation of Petitioners 14th Amend U.S. Const right to due Process. In re Winship, 397 U.S. 358, 364 (1970)

Petitioner Requests this Court afford liberal construction to this Reply brief keeping in accordance with Haines v. Kerner, 404 U.S. 519, 520 (1972).

III Conclusion

Petitioner Requests this Court accepts this Reply Brief for Review and grants an Evidentiary Hearing to resolve the material disputed facts of this case, and reverse his convictions and remand for a new trial, and appoint Counsel, because Petitioner's restraint is unlawful.

Respectfully Submitted This 8th day of Augo 2012

Tommy L. Crow Jr.
Tommy L. Crow, Jr., PROSE
1830 Eagle Crest WAY
Clallam Bay, Wa 98326-9723

DECLARATION OF SERVICE BY MAIL
GR 3.1(c)

I, Tommy Crow, declare that, on
this 8th day of Aug., 2012 I deposited the forgoing documents:

Reply to prosecutor's Response

or a copy thereof, in the internal legal mail system of

FILED
COURT OF APPEALS
DIVISION II
2012 AUG -6 AM 9:15
STATE OF WASHINGTON
BY DEPUTY

And made arrangements for postage, addressed to: (name & address of court or other party)

Court of Appeals Div. II
980 Broadway Suite 300
Tacoma, WA 98402

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated at Clallam Bay, WA on Aug 8th 2012
(City & State) (Date)

Tom Crow
Signature

Tom Crow
Type / Print Name